IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 16062 of 2003(K)

PETITIONER:

HAMILTON FUEL CORPORATION,
26/2422, FIRST FLOOR, MURIKKANAMPILLY,
THEVARA FERRY, COCHIN 682 013.

BY ADV. SRI.K.J. ABRAHAM

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY (TAXES) GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE SALES TAX OFFICER, IIND CIRCLE,
KALAMASSERY AT PALARIVATTOM.

BY SENIOR GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.P.(C) No. 16062 OF 2003

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Dated this the 10th August, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act . In this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner-firm has sought for the following reliefs:

> *"i) Declare that amendments effected by the Kerala Finance Act 2003 to Section 2 and 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (Act 15 of 1994) are beyond the legislative competence of the State Legislature and are hence unconstitutional and non-est in law.*
>
> *ii) Call for the records leading to Ext.P1 notice issued to the petitioner by the respondents and quash the same by the issuance of a writ of certiorari or such other writ, order or direction.*
>
> *iii) Issue a writ of mandamus or such other writ, order or direction directing the respondents not to implement the provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (Act 15 of 1994) to the extent it seeks to levy a tax on imported Kerosene Oil sought to be transported outside the State by way of a stock transfer or inter-state sale.*

iv) Direct the 3rd respondent to issue Form 26 for transporting imported Kerosene Oil belong to the petitioner and transported by way of a stock transfer/inter-state sale on the ground of non payment of Entry tax and grant a stay of all further proceedings for levy and collection of Entry Tax, pending disposal of the original petition.

v) To grant such other and incidental reliefs as this Honourable Court may deem just and necessary on the facts and circumstances of this case; and

vi) To allow this Original Petition with costs to the petitioner."

2. As we understand, the main relief sought for in this Writ Petition is to strike down section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 on the ground that the same is violative of the constitutional provisions .

3. The issues raised in this Writ Petition is no more debatable in view of what has been said by this court in ***Thressiamma L. Chirayil vs. State of Kerala*** **(2007(1) KLT 303**). In the said decision, the court has observed as under:

"A compensatory tax is levied on an individual as a member of a class and a fee is levied on an individual as such. The concept of compensatory tax is a judicially evolved principle and could be an exception to the provisions of Art. 301. In the case of a tax there is no identification of a specific benefit and even if such identification is there it is not capable of direct measurement. A tax is a payment where the special benefit, if

any, is converted into common burden. On the other hand, a fee is based on the "principle of equivalence". In the case of a fee or compensatory tax, the "principle of equivalence" applies and the basis of a fee or a compensatory tax is the same. The main basis a fee or a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Fee or a compensatory tax has to be broadly proportional and not progressive. Levy of entry tax on goods imported from other State to the State of Kerala and from abroad is not compensatory in nature since the State Government could not discharge its burden by placing materials before Court that payment of levy of entry tax is reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided. Demand and collection of entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 is illegal, unauthorized and violative of Art. 301 of the Constitution of India."

4. In view of the law declared by this court in ***Thressiamma L. Chirayil vs. State of Kerala (2007(1) KLT 303)***, the reliefs sought for by the petitioner-firm in this Writ Petition requires to be granted. Accordingly, the following:

O R D E R

i) Writ Petition is disposed of.

ii) Section 3 of the Kerala Tax on Entry of Goods into Local Areas Act is struck down on the same grounds as has been declared by the

Division Bench of this Court , since the same is violative of the constitutional provisions.

iii) I.A. No. 862 of 2003 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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W.P.(C) No. 16062 OF 2003

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Dated this the 10th August, 2007

J U D G M E N T